(1990) 10 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1897 of 1988

Anandeshwar Pande APPELLANT

Vs

Collector of Central Excise RESPONDENT

Date of Decision : 05-10-1990

Acts Referred:
Central Excise Rules, 1944 — Rule 173Q(1), 198, 232B, 57A
Central Excises and Salt Act, 1944 — Section 35C, 35Q

Citation : (1992) 39 ECC 139 : (1991) 52 ELT 367

Hon'ble Judges : B.P. Jeevan Reddy, C.J;G.K. Mathur, J

Bench : Division Bench

Advocate : S.P. Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Jeevan Reddy, C.J.—This writ petition is directed against the order dated 14-10-1988 passed by the Collector, Central Excise, Kanpur. Under this order, the Collector has overruled the objections raised by the petitioner and decided to proceed with the show cause notice dated 13-8-1987. A few facts need to be stated for a proper appreciation of the question arising herein.

2. On 13-8-1987 the said notice was issued by the Collector, Central Excise, Kanpur to:

(1) Lohia Machines Ltd. (Scooter unit),

(2) Shri L. K. Singhania, President of the Company.

(3) Shri Sanjeev Shriya, Director of the Company.

and

(4) Shri A. Pandey, Authorised signatory, of the Company (petitioner).

Calling upon them to show cause why penal action should not be taken against them under Rules 173Q(1)(d) and 198 of the Central Excise Rules, 1944. It was a composite notice mentioning various contraventions committed by the Company. One of the main allegations in the show cause notice is that the company had willfully submitted false and misleading information with a view to defraud the Exchequer of its revenue and in a fraudulent manner misrepresented and manipulated the list of inputs, which they had reasons to believe to be false, with the intent to evade payment of Central Excise duties to the extent of Rs. 82,27,082.41p on the final product by misutilizing the ''MODVAT'' Credit facility granted under Rule of the Central Excise Rules, 1944. Soon after receiving the said show cause notice, the petitioner filed a writ petition in this court questioning the issuance of the said show cause notice to him. His case was that he was formerly an employee of the Central Excise Department wherefrom he retired in May, 1980 and that thereafter he has been engaged by Lohia Machines as an Excise Consultant. Being merely an Excise Consultant, and not being an employee or officer of the company he said he cannot be proceeded against for the alleged violations committed by the company. The said writ petition was disposed of by this court on 17-2-1988 at the stage of admission under the following orders:-

"By this writ petition, the petitioner, xxx who claims to be an authorised representative of Lohia Machines, seeks quashing of the notice dated 13-8-1987, issued by the Collector, Central Excise, Kanpur, as the provisions of Rules 198 and 173Q of the Rules framed under the Excise Act are not applicable to him. We do not think it necessary at this stage to enter into this controversy, as admittedly after the show cause notice was issued the petitioner filed a reply. A copy of which has been filed as Annexure ''A-12'' to the writ petition. We think that it would be appropriate if the authorities concerned dispose of the objections raised in the reply filed by the petitioner.

Therefore, this petition is finally disposed of by directing the appropriate authority, the Collector, Central Excise, Kanpur to decide the objections raised on behalf of the petitioner, that he is not liable to be proceeded with under the aforesaid Rules."

3. According to the respondent, the petitioner failed to appear on the date prescribed, whereupon he passed orders on 8-8-1988, rejecting the objections raised by him. This order merely stated that since the petitioner had not cared to appear in spite of being given an opportunity of personal hearing, it was evident that he Was not serious in pursuing his application/objection dated 9-12-1987 and that even otherwise, there was enough material available against him, which would be indicated at the time of the final decision. Questioning the said order dated 8-8-1988, the petitioner filed another writ petition in this court which was disposed of on 18-8-1988. This court quashed the order dated 8-8-1988 on the only ground that it does not contain any reasons for rejecting the objections submitted by the petitioner. The Collector was accordingly directed to pass a reasoned order dealing with the objections taken by the petitioner. It is then that the petitioners was given a personal hearing and the impugned order passed on

14-10-1988. Before proceeding further, it will be appropriate to notice the contents of this order.

4. According to the impugned order, the petitioner raised two objections, namely:

(1) That a copy of the show cause notice has not been served upon him in the manner prescribed by Section 35C and, therefore, he had no opportunity to put forward an explanation.

(2) That a notice for imposing penalty on him under Rules 173Q(l)(d) and 198 cannot be issued against him since he is merely a consultant of the company, and hence not liable for the acts and omissions of the company.

The Collector dealt with both the contentions at length and held that the petitioner was not a mere consultant of the company, but was an ''Authorised signatory, of the Company and relied upon certain proceedings to show that he was in the nature of an official of the company. The objection relating to the defect in the service of the show cause notice was also rejected. Accordingly, the Collector proposed to proceed with the show cause notice. It is then that the petitioner approached this court for the third time by way of this writ petition. Along with the writ petition, he filed an application for an interim order directing the respondent Collector not to take any proceedings against him on the basis of the show cause notice dated 13-8-1987 pending the writ petition. On 22-11-1988, further proceedings in pursuance of the said show cause notice were stayed, while directing the petitioner to submit his reply/explanation to the show cause notice.

5. Sri S. P. Gupta, the learned Counsel for the petitioner, urged that the petitioner is merely an authorised representative - which position he likened to an advocate - and hence he cannot be punished for the acts and omissions of the company. He further submits that the show cause notice does not contain any allegation against the petitioner, which can form the basis of penalty proceedings against him under Rules 173Q(1)(d) and 198 of the Excise Rules. He submits that permitting the continuance of the proceedings in pursuance of the said show cause notice, against the petitioner, would be nothing short of harassment of the petitioner, since the show cause notice does not refer to any material, which indicates a prima facie case against the petitioner. This contention is disputed by the Learned Standing Counsel for the Central Government, who submitted that the petitioner being an ''Authorised signatory'' of the company, and being an official thereof, is liable for the false statements, declarations and misrepresentations made by the company with a view to evade the duty payable according to law.

6. Section 35Q of the Central Excise Act provides for appearance of a person by his authorised representative, sub-section (2) defines who an authorised representative is. Rule 232B(e) clearly empowers a former employee of the Department of Central Excise to act as authorised representative.

7. Rule 173Q provides for confiscation and penalty. In so far as it is relevant it says :-

"(1) If any manufacturer, producer or licensee of a warehouse-

... ...

(d) contravenes any of the provisions of these Rules with intent to evade payment of duty, then all such goods shall be liable to confiscation and the manufacturer, producer or licensee of the warehouse, as the case may be shall be liable to a penalty...."

Rule 198 provides for penalty for obstruction in discharge of duties by the competent officers or for refusing to furnish or furnishing false or misleading information. It reads thus:-

"If any person, by himself or by any person in his employ :-

(1) voluntarily obstructs, or offers any resistance to or impedes, or other- wise interferes with: or

(2) refuses or fails to give or willfully gives false or misleading information to the officer duly appointed under Rule 197 who is acting in accordance with his duty thereunder;

such person shall be liable to a penalty which may extend to one thousand rupees."

From a reading of the above rules, it is dear that the allegation against the petitioner is only under Rule 198. It cannot be under Rule 173Q for the simple reason that he is not a manufacturer, producer or licensee of a warehouse.

8. One of the objections raised by the petitioner was that he is merely an authorised representative and no more, hence he cannot be proceeded against under Rule 198 also. But the Collector, Central Excise has found to the contrary. He has referred to certain material in support of his finding. Inter alia, he had referred to the authority given to the petitioner, which included giving statements on behalf of the company and even authorising appointments of functionaries for Central Excise purposes. The power of attorney executed by the Company in favour of the petitioner reads thus:-

"Shri A. Pande, resident of 113/130, Swaroop Nagar, Kanpur is hereby authorised by the company to appear before the Central Excise Officers in connection with the inquiries and proceedings under the Central Excise Act and the Rules and to explain and to give statement on behalf of the company during such inquiries and proceedings."

It is also pointed out that on 16-8-1986 as authorised agent, the petitioner, also authorised certain other persons to sign gate passes. Signing them for Lohia Machines Ltd., it cannot, therefore, be said that the finding of the Collector, Central Excise is based on no evidence, in which situation alone, this court can interfere by way of certiorari. If there is some material to support the said finding, this court Cannot interfere. It is well-settled that adequacy of the material is not the province of this court in a certiorari. It is, therefore, not possible to quash the finding of the Collector, Central Excise that the petitioner is not a mere authorised representative, but he is an official of the company and that, at any rate, he comes within the net of Rule 198.

9. The other objection of the petitioner before the Collector, Central Excise pertains to the service of the show cause notice upon him. For elaborate reasons recorded by the Collector, this contention was also rejected. Moreover, having filed three writ petitions, and having filed a copy of the show cause notice along with the writ petitions, the petitioner can hardly be heard to say that the show cause has not been served upon him. Even assuming, for the sake of argument, that there is any defect in the service of the show cause notice on the petitioner, this is not a matter upon which this court will interfere at this stage.

10. Now coming to the contention urged by the learned counsel for the petitioner that there is no allegation in the show cause notice, which can Constitute a basis for proceeding against the petitioner under Rule 198 it may firstly be noticed that it is not one of the contentions or objections, which were urged before the Collector. Twice before this court sent the matter to the Collector and on both occasions he was asked to decide the objections raised by the petitioner. From the order of the Collector impugned herein it does not appear that this objection was urged before him. Be that as it may, even on merits, we are not satisfied about the correctness of the submission. Once it is held that the petitioner is not a mere authorised representative of the company and that he was more in the nature of an official of the company, he would be responsible for any false or misleading information given by the Company. Indeed, Rule 198 does not require that the person furnishing false information shall be an employee; it is enough, if he furnishes false/misleading information with the necessary intent. Whether the petitioner is really responsible for furnishing such false/misleading information, whether he did so knowingly or willfully, and what is the extent of his liability, if any, in that behalf are all matters, which have to be gone into by the Collector in the proceedings yet to be taken. We cannot make any pronouncement on the said aspects.

11. It is a matter of regret that on preliminary objections, the proceedings in pursuance of the impugned show cause notice have been held up for more than three years. The proceedings shall now go on according to law without any avoidable delay. That is in the interest of the petitioner as well as in the interest of all concerned.

12. The writ petition fails and is accordingly dismissed. No costs.

